IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15/10/2004

CORAM

THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.P.No.17227 of 2003

M.Saravanachelvam .. Petitioner

-Vs-

1. The Commissioner
R.S.Mangalam Panchayat Union
R.S.Mangalam
Ramnad District.

2. Mr.Dorairaj
Commissioner
R.S.Mangalam Panchayat Union
R.S.Mangalam
Ramnad District.

3. V.T.Natarajan
4. Ravichandran .. Respondents

4th respondent impleaded as per
order of Court dated 21.8.2003
in W.P.M.P.No.28628 of 2003

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issue of a writ of Declaration declaring a
proceedings pursuant to the Tender Notification Na.Ka.A2/1290/03 dated 27.05.20
03 of the first respondent herein as arbitrary, illegal and
unconstitutional.

!For petitioner : Mr.AR.L.Sundaresan

^For respondents-1 & 2 : Mr.P.S.Jayakumar

For 3rd respondent : No appearance

For 4th respondent : Mr.S.Parthasarathy

:ORDER

The petitioner seeks for a writ of Declaration declaring all the

proceedings pursuant to the tender notification Na.Ka.A2/1290/03 dated
proceedings pursuant to the tender notification Na.Ka.A2/1290/03 dated
27.5.2003 of the first respondent as arbitrary, illegal and unconstitutional.

2. The petitioner submits that he is a registered Class-I Contractor in Ramanathapuram District. He was granted certificate on 17.8.2001 enabling him to take up all public works in the Panchayat Unions in the District upto and above Rs.25 lakhs. He was, therefore, eligible to participate in the tenders floated by all Panchayat Unions in Ramanathapuram District. The petitioner further alleges that the third respondent is a Member of the Legislative Assembly of the ruling party. He is also the husband of the elected Chairman of the Panchayat Union. Though he does not have any role to play in the affairs of the Panchayat Union, taking advantage of his political affiliation and power, he was influencing all the officials of the Panchayat Union and the officers were acting only according to his dictation.

3. The petitioner further states that a tender notification was issued on 27.5.2003, inviting tenders in respect of six items of work. The estimated value of the works, cost of tender schedules and the sales tax payable thereon were fixed in the tender schedule conditions. It is also mentioned that the tender schedules were to be obtained from the first respondent on payment of cost of tender schedules and sales tax to the Treasury of the Panchayat Union by 3.00 p.m. on 5.6.2 003 and the tenders were to be submitted to the office of the first respondent by 3.00 p.m. on 6.6.2003 and the tender opening shall be at 4.00 p.m. on 6.6.2003. The petitioner went to the office of the first respondent on 2.6.2003 for obtaining the challan for remitting the cost for all the six works and to obtain the tender schedule. However, the second respondent/ Commissioner informed him that he has been instructed by the third respondent to restrict the issuance of tender schedules only to the persons recommended by him and unless the petitioner's name was recommended, the second respondent would not issue even the challan. Therefore, the petitioner was constrained to file W.P.No.15274 of 2003, praying for a Mandamus to direct the first respondent to issue the challan for payment of the cost and the sales tax. He also prayed for an interim direction to issue tender schedule on receipt of the cost. This Court, by order dated 4.6.2003, directed the first respondent to issue the challan for payment of cost and sales tax and to issue the tender schedule.

4. The petitioner further submits that on receipt of the copy of the order of this Court, he went to the office of the first respondent on 5.6.2003 and submitted a copy of the order of this Court and requested issuance of challan. The Assistant working in the office had received order copy at 12.20 p.m. Though the challan ought to have been issued on the same day, for reasons which are obvious, at the instance of the third respondent, the second respondent postponed the tender to 11.6.2003. According to the petitioner, the said action was only to somehow see to it that the tender schedules were not made available to the petitioner. Thereafter, he approached the office of the first respondent and again, on 10.6.2003. A challan for a sum of Rs.4,1 04/- towards the cost and sales tax for all six items was issued. However, by

the time the petitioner was to remit the said amount, he was informed that Item 1 out of six works was adjourned. A fresh challan was issued only for Items 2 to 6 for a sum of Rs.1,944/- towards cost and sales tax, which amount was remitted by the petitioner on 10.6.2003 itself.

5. According to the petitioner, after remitting the cost, he approached the first respondent for the grant of tender schedule. The first respondent had stated that the tender schedules were not ready and that it would be ready at 4.00 p.m. which the petitioner can collect at 4.00 p.m. However, even at 4.00 p.m., the tender schedules were not issued. The petitioner alleges that about 300 persons belonging to the third respondent came to the Panchayat Union office along with his son, mobbed the Panchayat Union office and prevented the first respondent from issuing the tender schedule. The second respondent was colluding with the third respondent and did not issue the tender schedule.

6. The petitioner is aggrieved by the fact that in spite of the orders of this Court directing the issuance of the challan and issuance of tender schedules, and even after having collected the cost of the tender schedules, the first respondent wilfully refused to issue the tender schedules. The tender schedules on 10.6.2003 should have been issued across the counter and refusal to do so was arbitrary. It was an abuse of power by the second respondent and due to the collusion between respondents-2 and 3. The petitioner further contends that the respondents are now attempting to award the contract in favour of other favoured contractors. The petitioner also submits that on refusal of the first respondent to issue tender schedules he had sent a telegraphic representation which was followed by a detailed representation to the respondents and also to the District Collector and other higher authorities. However, as the same did not yield any result and as the third respondent was merrily carrying on with his illegal activities, he has approached this Court.

7. A counter affidavit was filed by the first respondent along with a petition to vacate the stay. In the counter affidavit, the first respondent has submitted that the third respondent was not interfering with the affairs of the Panchayat Union. The said contention was absolutely false. The Chairman of the Panchayat Union was functioning without anybody's compulsion or instigation.

8. The first respondent had called for tender notification from the registered Contractors upto 3.00 p.m. on 6.6.2003. But the tender was subsequently postponed to 11.6.2003 due to administrative reasons. The statement that the petitioner had met the first respondent on 2.6.2003 was false. The contention that the first respondent had refused to issue tender schedules was also false. The first respondent had also filed a counter affidavit in W.P.No.16274 of 2003 denying the allegations. Subsequently, the petitioner has remitted a sum of Rs.1,944/- towards the cost of tender schedules and sales tax. Out of the six works, one work was postponed on administrative reasons under the powers of the first respondent. For the other five works, tender schedules have been issued. Therefore, the petitioner was allowed to remit the cost of tender schedules for Items Nos.2

to 6 alone. Though the petitioner had remitted a sum of Rs.1,944/- at 12.30 p.m. on 1 0.6.2003, he did not contact the first respondent for the grant of tender schedules. The petitioner's statement that he was told that the tender schedules would be ready at 4.00 p.m. and that the petitioner can collect the same at 4.00 p.m. was false. The petitioner did not approach the first respondent after remitting the cost of the tender schedule. The tender schedule was kept ready for the sake of the petitioner till 5.45 p.m. on 10.6.2003. After having remitted the amount at 12.30 p.m., he went away without intimating or approaching anybody. He did not come to the office upto 5.45 p.m. Therefore, the tender quotation was opened on 11.6.2003 at 4.15 p.m. and the highest quotation had been approved and the works were allotted. The first respondent states that nobody was allowed to enter the office except the contractors on the day of auction. He further states that the postponement of auction to 11.6.2003 was only due to administrative reasons. The contention of the petitioner that he has made a detailed telegraphic representation to the first respondent is false. The telephonic representation was not received by the first respondent from the petitioner.

9. In the meantime, one Ravichandran, was impleaded as the fourth respondent in the writ petition, being the highest bidder in whose favour the contract was awarded by the Panchayat Union. He has filed a counter affidavit stating that he is a registered Contractor and was doing the contract work for the past five years. He was the successful bidder in the auction held on 11.6.2003. The contract was also handed over to him and as per the tender conditions, he commenced the works of Item Nos.2 to 6 and had completed Item No.2. So far as Item Nos.3 to 6 were concerned, 50% of the works had been completed. But, by virtue of the interim

order, the writ petitioner was preventing him from discharging the work. The interim order was only in the event of the tender work not having been granted and if only the tender work had not been awarded to anyone. But, in this case, the tender was already granted and 50% of the work had been carried out with reference to Item Nos.3 to 6. The further contentions in the affidavit have been denied and the fourth respondent would state that he has invested huge amounts and completed the contract work for Item No.2 and 50% of the works for Item Nos.3 to 6. Therefore, he has sought for vacating the interim order in W.V.M.P.No.2049 of 2003.

10. The third respondent had filed a counter affidavit denying the contention that he was interfering with the affairs of the Panchayat Union. Being a Member of the Legislative Assembly, he has his own duties to discharge in his constituency and he was not interfering with the affairs of the Panchayat Union. As his wife was the Chairman of the Panchayat Union, the petitioner was wantonly implicating him in order to cause hardship to him. Regarding the allegation of the nongrant of tender schedules, the third respondent states that he has no affairs to discharge in the Panchayat Union office and he had never instructed any official to issue works to his own persons or to harass the petitioner. The writ petition has been filed only to harass him. He has no connection with the panchayat Union nor was he influencing the panchayat union. The contention that the tender schedules were not issued due to his influence and that about 300 members supporting him

mobbed the Panchayat Union office was not correct. He has no role to play in the Panchayat Union office or in the context of the tenders, as alleged by the petitioner. As the petitioner has failed to participate in the tender, he was falsely implicating the third respondent. He has not colluded with anyone or abused his official position nor had prevented free and fair competition. The orders in W.P.No.16274 of 2003 had been obtained without making him as a party. In fact, in the contempt petition filed by the petitioner, his name was deleted. Now, the petitioner has filed the present writ petition implicating the third respondent only to harass and cause hardship to the third respondent.

11. An additional counter affidavit was filed by the first respondent on 19.7.2004. In the additional counter affidavit, after restating the contentions already raised in the first counter affidavit, the first respondent further states that with reference to Item Nos.2 to 6, tenders were opened according to the regulations and the highest quotation was approved by the first respondent. Subsequently, the work regarding Item No.1 of the tender schedule was cancelled by the District Collector, Ramanathapuram, and hence, the first respondent has not notified the tender for Item No.1. It has not been allotted to any nominee of the third respondent.

12. The first respondent further submits that the allegation that the contract was finalised at the instance of the third respondent and the site was handed over in anticipation of the contract was absolutely false. In the tender auction held on 11.6.2004, only two members participated and the highest quotation was approved by the first respondent. There was no malpractice. The contention that the petitioner had made detailed telegraphic representation was false and no telephonic representation was also received from the petitioner.

13. Mr.AR.L.Sundaresan, learned counsel for the petitioner, contends that it has become a regular practice in all the public contracts either by the Government or by the local bodies to award the work only to a favoured group and in the process, even tender documents are not supplied to the other registered contractors. In this case, the third respondent is a Member of the Legislative Assembly and is also the husband of the Chairman of the Panchayat Union. He prevails upon the Panchayat Union to award the contract to his benamis and as a result of non-supply of the tender documents, the petitioner had to approach this Court even earlier. Even after getting a positive direction from this Court for the supply of tender documents, the petitioner's participation has been prevented by the high-handed action of the third respondent. The contention that the petitioner did not come again for collecting the tender documents is totally inconceivable, unbelievable and it would amount to stating that the petitioner had filed one writ petition and subsequently had paid the amount only with the object of filing another writ petition. The petitioner had immediately given a telegram to all the authorities which would amply establish his bona fides. But, even the fact of the telegram has been denied falsely in the counter affidavit, which was sufficient to expose the ulterior motive of the respondents.

14. Mr.R.S.Jayakumar, appearing for the first respondent, contends

that the activities of the first respondent Panchayat Union were conducted in a proper manner. The conduct of the petitioner in deliberately failing to receive the tender schedule from the office discloses his inimical attitude. Apparently, He was not prepared to execute the work but for reasons known to himself, the petitioner was making baseless allegations. A perusal of the Issue Register of the tender schedules would reveal that it has been endorsed thereon that though the petitioner had paid the Earnest Money Deposit, he had not turned up till 5.45 p.m. The petitioner cannot blame anyone for his own default. In view of the interim order of this Court, it was not possible to make the payment for the works executed by the contractor.

15. Learned counsel for the fourth respondent/ successful bidder, after adopting the contentions raised by the learned counsel for the first respondent, contends that the fourth respondent, having executed the work, cannot be denied the payment due to him as a result of any controversy between the Panchayat Union and the petitioner. The facts disclose that the petitioner had not turned up for receiving the tender documents and having failed to do so, he cannot prevent the successful bidder who had complied with all the tender requirements.

16. I had considered the submissions of both sides.

17. At an earlier stage of the hearing, on 2.8.2004, considering that much reliance was placed on the telegram alleged to have been sent by the petitioner on 10/11.6.2003 and that the said allegation had been denied in the counter affidavit, I directed the learned counsel for the first respondent to verify positively from the first respondent, who was stated to be present in Court, as to whether any such telegram had been received from the petitioner. I also informed the learned counsel for the petitioner that he has to produce the acknowledgment if he wants to rely on the Telegram. In view of the urgency expressed by the learned counsel for the respondents for early disposal of the writ petition to facilitate the payment of the bills, I had passed the following order on 2.8.2004:

" The learned counsel for the petitioner states that there is no reference to the two telegrams alleged to have been sent by him on 10 & 11.6.2003. The learned counsel for the respondent on instruction states that no telegram has been received from the petitioner. Petitioner's counsel is directed to produce the materials regarding proof of service of the telegram on the respondents. Call on 6.8.2004. "

18. When the hearing was again taken up on 12.8.2004, the learned counsel for the petitioner contended that the time was too short to obtain official verification from the post office. However, the learned counsel for the respondents has placed before this Court a letter from the first respondent dated 3.8.2004 in Roc.A2/2513/2004 addressed to the counsel, stating that the telegram sent by the petitioner on 11 .6.2003 had been delivered at their office on 13.6.2003. The xerox copy of the telegram was also enclosed along with the said letter to the counsel.

19. The crux of the dispute is whether really the petitioner was

denied supply of tender documents though he had complied with all the requirements for receiving the same. While the petitioner would say that though he had remitted the due amount well in time on 10.6.2003 itself, he was informed that the papers were not ready and that he was asked to collect the same at 4.00 p.m. and that even at 4.00 p.m., the tender schedule was not issued and a group of men had prevented the first respondent from issuing the tender to the petitioner, the first respondent would deny the same and state that after remitting the amount, the petitioner did not turn up for receiving the tender documents.

20. A close analysis of the overall facts and circumstances disclose that the respondents are not speaking the truth. The episode only lends strength to the frequent complaints which are made before the High Court that in the award of contracts, the authorities concerned indulge in high-handed attitude of not even supplying the tender documents to all the eligible contractors and the contracts are cornered by a selected and favoured few. The reasons for coming to that conclusion are as follows:

(i) The petitioner had approached the Court even earlier with the same complaint and in W.P.No.16274 of 2003, he obtains a direction from this Court on 4.6.2003 to the first respondent to issue challans for the payment of cost and sales tax and also to issue tender schedule for the works, namely, Item Nos.1 to 6 as referred in the tender notification dated 27.5.2003. Though the allegation is denied by the respondents, the fact remains that the petitioner had to approach the Court by filing a writ petition. Though the merits of the allegations were not gone into, it can be safely presumed that no reasonable man in the position of the petitioner would have approached this Court on false allegations. He is also in the business and would not be anxious to antagonise the authorities and he has approached the Court even before the tender was finalised. He cannot be accused of having approached the Court in the earlier writ petition as a disappointed rival after the tender had been awarded to some other person.

(ii) The petitioner, then, approaches the first respondent on 5.6.200 3 on the strength of the orders of this Court dated 4.6.2003. Apparently, irked by the directions of this Court, the tender is postponed to 11.6.2003. Though the reasons are stated to be administrative, the respondents do not choose to say as to what exactly was the administrative reason to postpone the auction, even on the face of the allegation of the petitioner that the postponement was motivated.

(iii) On 10.6.2003, though a challan was issued first for a sum of Rs.4,104/towards all the six items of work, a fresh challan was issued for Rs.1,944/after suddenly deleting the first of the six items of work and confining the tender only to the remaining five items. Judged from the pre-auction amount which the petitioner was directed to deposit for the remaining five works, the first item appears to be the substantial and major item of work and no proper reason is given to exclude the said item of work. Though the allegation that the first item was intended to be awarded and was, in fact, awarded to someone closer to the third respondent had neither been proved nor substantiated, equally, no proper reason is forthcoming as to why the first item was excluded at that time and had not been awarded to anyone till date. As the first counter affidavit did not contain proper denial of the petitioner's allegations regarding the cancellation of the first item of

work, I gave an opportunity to the learned counsel for the respondents to file an additional affidavit. The additional counter affidavit was filed on 19.7.2004, and in that counter affidavit also, no proper reasons have been stated for cancellation of the first item, beyond stating that it was cancelled due to administrative reasons under the power vested on the first respondent in terms of Condition No.10 of the tender schedule. It was further represented by the counsel for the respondents to the effect that Item No.1 was cancelled by order of the Collector dated 6.10.2003 in ROC R3/1261/2003 dated 6.10.2003, on the ground that in view of the pendency of the writ petition, the grant/sanction made by the Government with reference to the first item may lapse and hence, had to be cancelled. It is pertinent to note that the cancellation by the Collector is much later, namely, four months after cancellation by the first respondent. No reason is given for cancellation of the first item by the first respondent even after giving opportunity to file an additional counter affidavit. Power or discretion to cancel under Condition No.10 of the tender cannot be capriciously or arbitrarily exercised. When certain allegations are made before the Court, it is the duty of the first respondent to have placed all the facts before the Court. The silence on the part of the first respondent can only lead to the inference that the power had been exercised arbitrarily as a retaliation to the action of the petitioner in having obtained orders from the Court directing issuance of the tender.

(iv) In the context of the cancellation of the first item, it is further pertinent to note that N.V.Balasubramanian,J., by his order dated 4.6.2004 in W.P.M.P.No.20354 of 2003, had positively directed the first respondent to issue challans and also to issue tender schedule " with respect to work Nos.1 to 6 in Tender Notification in Na.Ka.A-2/12 90/2003 dated 27.5.2003 if the petitioner is otherwise eligible." Notice had been taken by the Special Government Pleader for the first respondent and even otherwise admittedly the order had been served on the first respondent. Even so, the first respondent chooses to cancel the first item of the work by using his administrative discretion, without getting any clearance from the High Court. Order of the High Court cannot be superseded administratively by first respondent. This conduct exposes to what extent the respondents are prepared to go even by disregarding the directions of the Court. The respondents cannot rely on the orders of the Collector which came only four months later and there is no explanation as to why and how the first item was cancelled by the Commissioner even in the face of the specific directions of the High Court. This would clearly establish the lack of bona fides on the part of the respondents.

(v) The most crucial feature of the sequence of events is what happened on 10.6.2003. While it is admitted that the petitioner had remitted the amount at 12.30 p.m., the first respondent contends that the petitioner did not approach the first respondent till 5.45 p.m., though the tender documents were kept ready. The truth or otherwise of the mutual contentions can be tested from the counter affidavit filed by the first respondent. The contention of the petitioner that he had met the first respondent and that he had asked him to come at 4.00 p.m. is denied. There is, of course, no positive proof for the statement of the petitioner that he had approached the first respondent immediately after the payment of the amount and that he was asked to come back

at 4.00 p.m. Some of the other circumstances indicate that the first respondent had not been acting bona fide. The petitioner has positively stated in Paragraph 11 of the affidavit that about 300 persons along with the son of the third respondent had come in a car and prevented the first respondent from issuing the tender and the second respondent, who was working as the Commissioner, colluded with the third respondent and did not issue the tender. This allegation is very casually dealt with in the counter affidavit as follows:

" It is submitted that other than contractors registered in the panchayat union nobody was allowed to enter this office on that day. In this position it is true that the petitioner has failed to get his tender schedules in this office on that day. "

There is no attempt to deal specifically the positive allegation that the third respondent's son, with his men, had come to the office and prevented him from issuing the tender.

(vi) The conflicting and incorrect stand taken by the first respondent as regards the telegram alleged to have been issued by the petitioner immediately after the incident would amply expose that the first respondent is not speaking the truth. In paragraph 16 of the affidavit, the petitioner has stated as follows:

" I submit that immediately on refusal of the respondents herein to issue tender schedules to me, I caused a telephonic notice to be issued to the respondents herein on 10.06.2003 itself and followed up the same with a detailed telephonic representation to the respondents herein and also to the District Colletor, Ramnad and other high dignitaries in the State complaining of the arbitrary action of the respondents. However, the same has not yielded any result whatsoever and the third respondent is merrily carrying on with his illegal activities in the matters of tenders in the District. "

It is true that by mistake, the petitioner had used the wrong expression "telephonic" instead of "telegraphic". But, it has been understood properly by the first respondent and in his counter affidavit dated 18.7.2003, he has stated as follows:

" It is submitted that the petitioner has represented detailed Telegraphic representation to the Ist respondent which is false. It is submitted that no such telephonic representation was received from the petitioner by the Ist respondent. "

In the additional counter affidavit dated 19.7.2004 which was filed after the writ petition was taken up for hearing also, the same statement is reproduced. During the hearing, I had specifically asked the learned counsel for the respondents to ascertain from the first respondent as to whether any telegram has been received or not, and on instructions, the counsel informed the Court that no telegram had been received. I had informed the learned counsel for the petitioner that if he is not able to produce any acknowledgment, it will not be possible to accept his contention. On 2.8.2004, the hearing was adjourned to 6.8.2004. On the next hearing date, surprisingly, the learned counsel for the respondents had produced the following letter of the first respondent/Commissioner dated 3.8.2004 addressed to him, which reads as follows:

" Sub: Tender Case R.S. Mangalam Panchayat Union W.P.17227/03 Filed by Thiru M.Saravana selvan details

submitted Regarding.
Ref: 1) W.P. 17227/03 Filed by
M.Saravanaselvan.

With Regard to the above case, It is informed that the
Telegram was sent by Thiru.M.Saravana Selvan on 11.06.2003 as it was delivered to our office on 13.06.2003 (Copy of the Telegram is enclosed).

It is further informed that Thiru M.Saravana Selvan has represented detailed Telegraphic representation to the 1st respondent which is false.

It is also informed that item No.1 out of six works was post poned later due to Administrative reason under the power of 1st respondent in condition No.10 of Tender Schedule. Hence Tender Schedule was not given to any of the contractors. Subsequently the District Collector Ramanathapuram has cancelled the work Vide his Proceedings Roc.R3/1 261/2003 Dated 6.10.2003. Further the same work has not been taken up in any other Scheme. The work is physically pending now.

This is for your kind information and further action.

Sd/- xxxx
Commissioner
Panchayat Union
R.S.mangalam. "
The xerox copy of the telegram is also enclosed therewith, which discloses that the telegram had been received at the telegraphic office at Devakottai on 11.6.2003. It also bears the seal of the post office at Rajasingamangalam on 13.6.2003 and served at the first respondent's office also on the same day. In the background of the abovereferred material, it is rather shocking that the first respondent should have taken the stand both in the first counter affidavit and the additional counter affidavit that no telegraphic message had been received and also orally instructed his counsel that no telegram had been received. But later, when I had directed the counsel for the petitioner to obtain the acknowledgment from the Postal Department, the truth comes out, the respondent condescending to admit the receipt of the telegram. The action of the first respondent thus misleading this Court by filing a false affidavit does not only amounts to contempt of Court, but also throws light on the lack of bona fides in the impugned grant of tender.
(vii) The subsequent conduct of the respondents also expose the disregard for the rule of law by the respondents. When once the interim order had been issued by this Court on 24.6.2003 and received by the respondents immediately thereafter, the respondents ought not to have proceeded with the work thereafter and the Commissioner should have approached this Court to obtain further directions. But, it is only after one month, the Commissioner files the petition on 24.7.2003 to vacate the stay. In the affidavit filed in support of the petition, nothing is stated regarding the actual stage of execution of the work. The successful bidder/fourth respondent files a petition to vacate the interim order after a further period of one month on 29.8.2003, stating that he has completed the work relating to Item No.1 and

50% of the work in Item Nos.3 to 6. But the respondents do not bother about the pendency of the writ petition or the interim order, but proceed further to complete the work. The fact that all the works had been completed subsequently is admitted. It is true that the tenor of the order dated 24.6.2003 is restricted, namely, "interim injunction if the work is not allotted to third parties consequent to the opening of the tender". But, the first respondent, being a public official, owes a duty to the Court and ought to have directed stoppage of work forthwith and to move the Court and to await for further orders. The conduct of the respondents may not strictly amount to contempt of Court or violation of the orders. But the series of happenings disclose that the respondents are bent upon proceeding further in their own interest without any anxiety to obtain clearance from the Court or by placing all the facts before the Court at the earliest point of time. In fact, the attitude of the respondents was found to be reprehensible by E.Padmanabhan,J. while dealing with the petition to vacate the stay. By his order dated 12.8.2003, the learned Judge recorded a finding that the stand taken by the respondents as regards not furnishing tender schedule was rather unbelievable and the Commissioner was directed not to make any payment to the Contractor who had been awarded, and that any violation of the order would be viewed seriously. Subsequently, D.Murugesan,J. dismissed the petition to vacate the interim stay holding that he did not find any merit to vacate the stay. In spite of the aforesaid orders, the respondents have chosen to proceed further and complete the work, even after they had themselves approached the Court to vacate the interim stay and their petition was ultimately dismissed and interim order was made absolute.

21. It is true that Contempt Petition No.622 of 2003, which was filed by the writ petitioner, was dismissed on 28.11.2003 by N.V. Balasubramanian,J., but not without recording his displeasure at the conduct of the respondents, which is as follows:
" I therefore close the contempt petition, but with reluctance as I am not able to appreciate the act of the respondents.
When the petitioner remitted the money by chalan, the respondents should have taken steps to issue tender schedules as soon as they received the money. The plea taken by them that the petitioner was asked to come again to collect tender schedules by 4.00 p.m. is not a practice which can be appreciated by the Court. The respondents should have acted in a professional manner and when the money was paid for the issue of tender schedules, the respondents should have issued tender schedules then and there, particularly when the tender was postponed from one date to another. Though the action of the respondents is not commendable, I do not find that they committed any contempt of Court. Accordingly, the contempt petition is closed. No costs. Connected sub Application is also closed. "
22. It is true that the third respondent, a Member of Legislative Assembly, had filed a separate counter affidavit denying the allegations of the petitioner and also contending that though his wife is the President of the Panchayat Union, he has not been interfering with the affairs of the Panchayat Union in any manner. There is no substantial material to implicate the third respondent directly and he is therefore exonerated. But as commented by the counsel for petitioner, it is seen that the counter affidavit by the third respondent has been filed without filing any vakalat but through

the counsel representing the first respondent, against whom, allegations of collusion have been made. Such indiscreet action should have been avoided.

23. The facts of this case, disclose a dismal pattern of conduct which is being brought to the notice of this Court frequently, namely, that not even tender documents are issued to all eligible contractors and that the supply of the documents is restricted only to a favoured syndicate or individuals. Some of the officials and non-officials who wield the power at various levels and involved in the process of tender, appear to think that they are above the law and even after the matters are brought to the notice of the High Court, appear to adopt tactics even to render orders of Court ineffective by total disregard even to the process of Court. Even after the passing of the legislation under the Tamil Nadu Transparency of Tenders Act, 1998, the grant of many of the tenders, small or big, do not conform to the provisions of the said Act and Regulations. A citizen has to come before this Court even to obtain tender documents and even after orders are issued, auction is deliberately postponed and different methodology is adopted to deny the benefits of the order. Not only the contention that the petitioner went away after paying the initial amount and that he did not return till 5.45 p.m. sounds very artificial and improbable, but is also belied by the subsequent conduct of the respondents, as dealt with above, inclusive of filing of false affidavits regarding the telegram sent by the petitioner.

24. In fact, this Court, on earlier occasions in similar cases had directed the Government to ensure that the officials in the lower level do not indulge in such high-handed practice of even refusing to give the tender documents to the eligible contractors. Even though there is a general instruction to the effect that any contractor, if he chooses to receive the tender document by post or courier, that also should be complied with subject to the contractor making the additional payment, as required, the same state of affairs continue.

25. I am, therefore, fully convinced that the overall facts stated in the affidavit resulting in unfair denial of tender documents to the petitioner is amply established. The first respondent, whether by himself, for his own reasons or at the behest of someone, had acted in a clandestine manner in disregard to his duties and also with an intention to deny the petitioner not only his lawful rights but also to circumvent the orders of this Court. Cancellation of the first item of work is contrary to the specific orders of this Court. The conduct of the Commissioner, namely, whoever was the individual discharging his duties at the relevant period, is highly improper. The first counter affidavit had been filed by one Dorairaj and the additional counter affidavit had been filed by P.V.Muthuramalingam. Dorairaj has been impleaded by name in the writ petition. It is made clear that whoever was the official functioning as the Commissioner at the relevant point of time, is answerable and if he is not willing to speak the truth, namely, at whose behest he was acting, he has to reap the consequences. Any directions against him should have deterring effect and a warning to such officials who feel that extraneous factors are more important than rule of law.

26. It is now represented that the entire work has been completed and

only the payment to the contractor remains to be complied with. The writ petition cannot be rendered infructuous or ineffective by act of parties deliberately and high-handedly aimed at nullifying or rendering the process of Court ineffective. The petitioner has approached the Court twice but without any avail though the action of the respondents is found to be illegal. A writ Court exercising its extraordinary jurisdiction, as provided under the Constitution, cannot be a mute spectator to such deliberate and illegal acts and is not powerless to mould the relief accordingly. The entire illegal exercise was obviously for the benefit of the fourth respondent and he cannot also wriggle out of the consequences which are bound to follow. Even after filing a petition to vacate the stay belatedly, the fourth respondent, without waiting for further orders had proceeded further to complete the works which attitude discloses utter disregard to the process of Court and on the assumption that once he completes the work nothing could be done against him.

27. However, since the entire works are stated to have been completed, innocent third parties, the workers under the contractor, should not be denied payment of their dues/wages and at the same time, it would be just and proper to impose heavy and exemplary costs on both the Commissioner and the fourth respondent for their illegal conduct.

28. It is desirable that the Government formulates a proper procedure to avoid such illegal grant of tenders at the lower level in total disregard to the basic obligations of the Government. Refusal to grant even the tender schedules is bound to reflect very badly on the administration and such incidents have to be curbed by stern measures, if one believes in the rule of law. Contractors also would be well advised to apply through post or courier, which will avoid such denial of tender schedules and the Government/local bodies should provide for such facility if it is not already made available. There should be sufficient time gap between the calling for tender and submission of the tender. In the interest of the Government and the public bodies, this would also eliminate frivolous complaints.

29. In the above circumstances, I am inclined to pass the following order:
(i) The writ petition is allowed declaring all the proceedings pursuant to the impugned tender notification as arbitrary and illegal;
(ii) However, as the works are stated to have been completed, payments due to the fourth respondent shall be made subject to the following conditions.
(iii) The second respondent-Commissioner who was actually in charge of the Panchayat at the time of the auction, shall pay an exemplary cost of Rs.15,000/-, out of which, Rs.5,000/- shall be paid to the writ petitioner and Rs.10,000/- to the Tamil Nadu State Legal Services Authority, Chennai, within a period of four weeks from the date of receipt of a copy of this order. The amount shall be paid by him personally and not from the funds of the Panchayat Union. This direction against the respondent-Commissioner shall also be recorded in his service register. A copy of this order shall be forwarded to the District Collector for such action.
(iv) The fourth respondent, beneficiary under the illegal tender, shall also pay exemplary cost of Rs.15,000/-, out of which, Rs.5,000/- shall be paid to the writ petitioner and Rs.10,000/- to the Tamil Nadu State Legal Services

Authority, Chennai, within four weeks from the date of receipt of a copy of this order.
(v) The District Collector, Ramanathapuram District, shall file a compliance report of the directions contained in paragraph 29(iii) above, on or before 22.11.2004.

Index: Yes

Internet: Yes

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To:

1. The Commissioner
R.S.Mangalam Panchayat Union
R.S.Mangalam
Ramnad District.

2. Mr.Dorairaj
Commissioner
R.S.Mangalam Panchayat Union
R.S.Mangalam
Ramnad District.

3. The District Collector
Ramanathapuram District.